

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

Douglas J. Carpenter,

Complainant,

v.

**PROBABLE CAUSE  
ORDER**

Jeffrey T. Walker,

Respondent.

The Complainant, Douglas Carpenter, filed a complaint under the Fair Campaign Practices Act on September 24, 2010.

The above-entitled matter came on for a probable cause hearing as provided by Minn. Stat. § 211B.34, before Administrative Law Judge Eric L. Lipman on September 30, 2010. The probable cause hearing was conducted by telephone conference call.

Douglas Carpenter, Complainant, appeared on his own behalf and without counsel. Jeffrey Walker, Respondent, appeared on his own behalf without counsel.

Based upon the record and all the proceedings in this matter, and for the reasons set forth in the attached Memorandum, the Administrative Law Judge concludes that there is probable cause to believe that Respondent Jeffrey Walker violated Minnesota Statute § 211B.06, for having identified himself as a certified public accountant (CPA) in a campaign advertisement.

**ORDER**

**IT IS HEREBY ORDERED THAT:**

1. This matter is referred to the Chief Administrative Law Judge for assignment to a panel of three administrative law judges pursuant to Minnesota Statute § 211B.35.
2. The parties are directed to submit to the undersigned by **4:30 p.m. on Wednesday, October 6, 2010** whether they wish to participate at the evidentiary hearing in person, by telephone or by video conference from Itasca County.

3. By **4:30 p.m. on Friday, October 8, 2010**, Mr. Carpenter shall submit to the OAH, and serve a copy upon Mr. Walker, a completed subpoena request form directed at the Custodian of Records for the Minnesota Board of Accountancy. (See, <http://www.oah.state.mn.us/forms/sub-req.html>).

Dated: October 4, 2010

/s/ Eric L. Lipman \_\_\_\_\_  
ERIC L. LIPMAN  
Administrative Law Judge

### MEMORANDUM

The Complainant, Douglas J. Carpenter, is a candidate in the November 2010 election for Itasca County Auditor/Treasurer. The Respondent, Jeffrey T. Walker, is the incumbent Itasca County Auditor/Treasurer and is seeking re-election.

The Complaint alleges that Mr. Walker has stated falsely in campaign material that he is a certified public account (CPA). According to the Complaint, Mr. Walker's CPA authority expired in 2008.

The Complainant attached to the Complaint copies of campaign advertisements that Mr. Walker placed in the *Grand Rapids Herald Review* in which Mr. Walker lists "certified public accountant" as one of his qualifications. The Complaint alleges that, by preparing and disseminating this campaign advertisements, Mr. Walker violated Minn. Stat. § 211B.06.

At the probable cause hearing, the Complainant submitted a copy of a September 16, 2010, electronic mail message from Steven Renville, an investigator with the Minnesota Board of Accountancy. The message responds to a query regarding the status of Mr. Walker's CPA certificate. In the electronic mail message, Mr. Renville states that Mr. Walker's CPA certificate expired on December 31, 2008 and that Mr. Walker cannot use the designation "CPA" until his certificate has been "brought to current status."<sup>1</sup>

In response to the Complainant's allegations, Mr. Walker submitted a copy of his "Sole Proprietor Firm Permit" issued by the Board of Accountancy. Unless renewed, the permit expires on December 31, 2010.<sup>2</sup>

Mr. Walker testified that the permit was issued to him sometime in early 2010. Moreover, he asserted that that he has renewed his certificate and submitted the

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<sup>1</sup> Ex. 1.

<sup>2</sup> Ex. A.

renewal fee and disclosure forms each year since he first obtained a CPA certificate in 1984. Mr. Walker likewise testified that he is unaware of any change in his status as a CPA and was not informed by the Board that there was any issue with his licensure.

## **I. Analysis**

### **A. Accountancy Standards**

Minnesota Statutes § 326A.01, subd. 4, defines “certificate” to mean a certificate as a certified public accountant issued under section 326A.04. The word “permit” is defined to mean a permit to practice as a CPA firm issued under section 326A.05.<sup>3</sup>

According to Minn. Stat. § 326A.05, subd. 3, a majority of the ownership of a CPA firm must hold valid certificates. Applications for initial certificates and for renewal of certificates are governed by Minn. R. 1105.2500. Applications for renewal of certificates must be accompanied by evidence satisfactory to the Board that the applicant has complied with the continuing professional education requirements under this chapter and Minnesota Statutes, section 326A.04, subdivision 4. It is the responsibility of the applicant to file the renewal application form along with the appropriate fee by December 31 of each year.<sup>4</sup> A person may not use the CPA title without a certificate in active status.<sup>5</sup> Likewise important, Minn. R. 1105.4000 (D) prohibits the Board of Accountancy from issuing a firm permit unless each of the firm’s principals holds a current accountant’s certificate.

The purpose of a probable cause hearing is to determine whether there are sufficient facts in the record to believe that a violation of law has occurred as alleged in the complaint.<sup>6</sup> The Administrative Law Judge must decide whether, given the facts disclosed in the record, it is fair and reasonable to require the respondent to address the claims in the Complaint at a hearing on the merits.<sup>7</sup> The Office of Administrative Hearings looks to the standards governing probable cause determinations under Minn. R. Crim. P. 11.03 and by the Minnesota Supreme Court in *State v. Florence*.<sup>8</sup> If the Judge is satisfied that the facts appearing in the record, including reliable hearsay, would preclude the granting of a motion for a directed verdict, were one to be made, a motion to dismiss for lack of probable cause should be denied.<sup>9</sup> A judge’s function at a

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<sup>3</sup> Minn. Stat. § 326A.01, subd. 13.

<sup>4</sup> Minn. R. 1105.2500 (A) (2008).

<sup>5</sup> Minn. R. 1105.5600 (2008).

<sup>6</sup> Minn. Stat. § 211B.34, subd. 2 (2008).

<sup>7</sup> *State v. Florence*, 239 N.W.2d 892, 902 (Minn. 1976).

<sup>8</sup> *Id.*; see also Black’s Law Dictionary 1219 (7<sup>th</sup> ed. 1999) (defining “probable cause” as “[a] reasonable ground to suspect that a person has committed or is committing a crime”).

<sup>9</sup> *State v. Florence*, at 903. In civil cases, a motion for a directed verdict presents a question of law regarding the sufficiency of the evidence to raise a fact question. The judge must view all the evidence presented in the light most favorable to the adverse party and resolve all issues of credibility in the

probable cause hearing does not extend to an assessment of the relative credibility of conflicting testimony.

## **B. Fair Campaign Practices Act**

Minn. Stat. § 211B.06 prohibits a person from intentionally participating in the preparation or dissemination of campaign material that is false and which the person knows is false or communicates to others with reckless disregard of whether it is false. The term “reckless disregard” was added to the statute in 1998 to expressly incorporate the “actual malice” standard applicable to defamation cases involving public officials from *New York Times v. Sullivan*.<sup>10</sup>

Based upon this standard, the Complainant has the burden at the hearing to show by clear and convincing evidence that the Respondent prepared or disseminated the material knowing that it was false or did so with reckless disregard for its truth or falsity. The test is subjective; the Complainant must come forward with sufficient evidence to prove the Respondent “in fact entertained serious doubts” as to the truth of the material or acted “with a high degree of awareness” of its probable falsity.<sup>11</sup>

## **C. Accountancy Standards**

The evidence in the record to date is insufficient to resolve the key questions that are presented – namely, whether Mr. Walker had an active CPA certificate at the time he placed the advertisement in the *Grand Rapids Herald Review*, and if he did not, whether he knew or should have known that his certificate had lapsed. No party could explain the discrepancy between the Investigator’s claim that Mr. Walker’s certificate had expired in 2008 and Mr. Walker’s holding of a current accountancy firm permit.

After considering the arguments and the submissions of the parties, the Administrative Law Judge finds that Mr. Carpenter has submitted sufficient evidence to persuade a reasonable jury that the Respondent violated Minn. Stat. § 211B.06. The Administrative Law Judge concludes that it is fair and reasonable to require Mr. Walker to address the Mr. Carpenter’s allegation at a hearing on the merits.

Moreover, during the probable cause hearing, both parties agreed that the only additional evidence that needs to be adduced during an evidentiary hearing is testimony and documents from the Minnesota Board of Accountancy as to Mr. Walker’s licensure. If the claim “certified public accountant” is found to be false, the panel will also consider

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adverse party’s favor. See, e.g., Minn. R. Civ. P. 50.01; *LeBeau v. Buchanan*, 236 N.W.2d 789, 791 (Minn. 1975); *Midland National Bank v. Perranoski*, 299 N.W.2d 404, 409 (Minn. 1980). The standard for a directed verdict in civil cases is not significantly different from the test for summary judgment. *Howie v. Thomas*, 514 N.W.2d 822 (Minn. App. 1994).

<sup>10</sup> *New York Times v. Sullivan*, 376 U.S. 254, 279-80 (1964); *State v. Jude*, 554 N.W.2d 750, 754 (Minn. App. 1996).

<sup>11</sup> *St. Amant v. Thompson*, 390 U.S. 727, 731 (1968); *Garrison v. Louisiana*, 379 U.S. 64, 74 (1964). See also *Riley v. Jankowski*, 713 N.W.2d 379 (Minn. App.), rev. denied (Minn. 2006).

evidence relating to the Respondent's knowledge or reckless disregard of the falsity of the statement.

Accordingly, this matter will be referred to the Chief Administrative Law Judge for assignment to a panel of three administrative law judges for an evidentiary hearing.

**E. L. L.**